

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

GENDER DYSPHORIA AND TRANSGENDER DETAINEES

IHSC Directive: 03-25

ERO Directive Number: 11759.3

Federal Enterprise Architecture Number: 306-112-002b

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By Order of the Acting Assistant Director
Stewart D. Smith, DHSc/s/

- 1. PURPOSE:** The purpose of this issuance is to set forth the policies and procedures for the provision of medical care for transgender detainees and the management of Gender Dysphoria (GD)-related issues as they relate to detainees in U.S. Immigration and Customs Enforcement (ICE) custody.
- 2. APPLICABILITY:** This directive applies to all IHSC personnel, including but not limited to, Public Health Service (PHS) officers, civil service employees and contract personnel. It is applicable to IHSC personnel supporting health care operations in ICE-owned or contracted detention facilities and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of its employees supporting IHSC.
- 3. AUTHORITIES AND REFERENCES:**
 - 3-1.** Title 8, Code of Federal Regulations, Section 235.3 ([8 CFR § 235.3](#)), Inadmissible Aliens and Expedited Removal;
 - 3-2.** Section 232 of the Immigration and Nationality Act, as amended, Title 8, U.S. Code, Section 1222 ([8 U.S.C. § 1222](#)), Detention of Aliens for Physical and Mental Examination;
 - 3-3.** Title 8, Code of Federal Regulations, Part 232 ([8 CFR 232](#)), Detention of Aliens for Physical and Mental Examination;
 - 3-4.** Section 322 of the Public Health Service Act, as amended, Title 42, U.S. Code, Section 249(a) ([42 U.S.C. § 249\(a\)](#)), Medical Care and Treatment of Quarantined and Detained Persons;

- 3-5. Title 42, U.S. Code, Public Health Service Act, Section 252 ([42 U.S.C. § 252](#)); Medical Examination of Aliens.
- 3-6. The Privacy Act of 1974, Title 5, U.S. Code, Section 552(a) (5 U.S.C. § 552(a)), as applied in the Department of Homeland Security (DHS) Privacy Policy Memorandum: 2007-1, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons* (January 7, 2009).
- 4. **POLICY:** An IHSC medical provider (MP) must complete a physical examination for transgender detainees within two business days of intake. A behavioral health provider (BHP) must also perform a mental health evaluation for transgender detainees within this same timeframe. MPs provide health care and medication for patients with GD, based on community standards regarding medical necessity. MPs also advise the medical department representatives on the Transgender Classification and Care Committee (TCCC) regarding a suitable housing assignment.

Transgender detainees are defined as detainees who:

Indicate they are transgender to ERO staff on Form I-213 (i.e., identifies as opposite of their assigned birth sex);

Self-identify as being transgender to medical staff; and/or

Have medical transfer records that indicate a diagnosis of GD, formerly referred to as Gender Identity Disorder (GID).

- 4-1. **Evaluation:** An MP must complete a physical examination and a BHP must complete a mental health evaluation for all transgender detainees within two business days of intake to determine if GD appropriate treatment is clinically indicated and for a general mental health assessment.
- 4-2. **Treatment:** An MP must provide medical care to transgender detainees to meet the needs of their assigned birth sex, as well as appropriate care to address relevant opposite sex needs. Medical care includes preventive health screening(s) at annual physical examinations, as applicable. Clinical Pharmacists (CPs) may provide chronic GD medical care services defined below (section 6) after the initial evaluation by an MP, if authorized in their collaborative practice agreement.
 - a. **Hormone Therapy:** An MP must initiate and continue hormone therapy for GD detainees as clinically indicated and in accordance with IHSC clinical guidelines.

- b. **Therapy and Medication Review:** An MP must review the detainee's current treatment regimen and complete a thorough health assessment to determine whether any changes in hormone dosing or preparation are needed. An MP must issue special needs related to the care of detainees, including those for undergarments that are consistent with the detainee's gender identity. To the extent that is practicable and appropriate, health service administrators (HSA) should coordinate with custody staff to honor the special needs of transgender detainees in the same manner as any other medical special need.
- c. **Informed Consent:** An MP must explain the risks and benefits of taking opposite sex hormones for the treatment of GD to detainees. The detainee and counseling MP must review and sign the eClinicalWorks (eCW) informed consent document. An MP must document the counseling and education provided to the detainee in the detainee's health record prior to the initiation or continuation of therapy while in ICE custody.

4-3. Same-Sex Chaperones: Health care personnel must coordinate access to same-sex chaperones for transgender detainees. The same-sex chaperone must belong to the sex in which the detainee identifies and must be present during all examinations of genitalia, breasts, and perineum. The MP must document the presence of the chaperone in the detainee's health record.

4-4. Housing: Transgender detainees must be placed into protective custody for a maximum of 72 hours (excluding holidays and weekends) to allow for the TCCC to meet and recommend housing placement as part of a detention plan. The HSA must designate an appropriate medical staff member (minimum of a registered nurse (RN)) and a behavioral health staff member (minimum of a licensed clinical social worker (LCSW)) to serve as the medical department representatives on the TCCC. The TCCC meets on an ad hoc basis to provide recommendations for housing assignments based on an individual assessment and the facility housing resources. TCCC meetings may be held in person or via teleconference. Prior to the TCCC meeting, the medical department representatives must interview the detainee to gather relevant information, including the detainee's preferences and requests. They must also collect information concerning housing and searches conducted by custody. For further information on the TCCC, see ERO memorandum: *Further Guidance Regarding the Care of Transgender Detainees*, dated June 19, 2015.

5. PROCEDURES:

5-1. Identification: Health staff must schedule a physical exam and an MP must complete the physical exam for all transgender detainees within two business

days of intake. The MP must document the examination in the detainee's health record, including pertinent past medical and surgical treatment.

5-2. Mental Health Assessment: Health staff must refer a transgender detainee to a BHP for an assessment of general mental health and to apply Diagnostic Statistical Manual (DSM) criteria to assess a possible diagnosis of GD. This mental health assessment must occur within two business days of intake or condition identification (i.e., when medical is informed of a detainee who identifies as transgender while in ICE custody).

5-3. Medical Provider-Guided Treatment: An MP must screen, counsel and order laboratory-guided hormone treatment(s) for detainees who have met diagnostic criteria and for whom the medical provider deems it appropriate to proceed with treatment in accordance with IHSC clinical guidelines. The MP must issue special needs for undergarments that are consistent with the detainee's gender identity.

6. HISTORICAL NOTES: This directive replaces IHSC Directive: 03- 25, *Gender Dysphoria and Transgender Detainees*, dated 1 Dec 2015. Clinical Pharmacist information was added to 4-2 and definitions were added.

7. DEFINITIONS:

Behavioral Health Providers – Behavioral health providers are psychiatrists, clinical psychologists, independently licensed social workers, psychiatric nurse practitioners or any other behavioral health professional who, by virtue of their license, education, credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.

Clinical Pharmacist – Clinical pharmacists provide pharmaceutical care to patients by optimizing medication therapy and providing disease state management education. Clinical pharmacists may provide direct patient care under the auspices of a collaborative practice agreement with an on-site or remotely located physician. Clinical pharmacists have achieved either a doctoral degree in pharmacy or a bachelor's degree in pharmacy with either an additional certification in medication therapy management (MTM) or national board certification (BCPS, BCACP, etc.). (IHSC Operational Definition)

Health Care Personnel or Providers – Health care personnel or providers are credentialed individuals employed, detailed, or authorized by IHSC to deliver health care services to detainees. It includes federal and contract staff assigned or detailed (i.e. temporary duty) who provide professional or paraprofessional health care services as part of their IHSC duties. (IHSC Operational Definition)

Health Services Administrator (HSA) – The HSA is the designated IHSC administrator at a facility who provides administrative and supervisory oversight

of day to day operational activities at IHSC staffed medical facilities. (IHSC Operational Definition)

Health Staff – Health staff includes all health care professionals (including contracted staff) as well as administrative and supervisory staff at *IHSC staffed medical clinics*. (IHSC Operational Definition)

Medical Providers – Medical providers include physicians, physician assistants, nurse practitioners, and clinical pharmacists. (IHSC Operational Definition)

Mid-Level Providers – Mid-level providers are nurse practitioners (NPs) and physician assistants (PAs). (IHSC Operational Definition)

Nursing Staff – Nursing staff, within IHSC, are registered nurses (RNs), licensed practical nurses (LPNs), and licensed vocational nurses (LVNs). (IHSC Operational Definition)

Transgender – Transgender people are those whose gender identity or expression is different from their assigned sex at birth. (PBNDs 2011)

8. APPLICABLE STANDARDS:

8-1. Performance-Based National Detention Standards (PBNDs):

PBNDs 2011:

4.3: Medical Care.

2.1: Admission and Release.

8-2. American Correctional Association (ACA):

Performance-Based Standards for Adult Local Detention Facilities, 4th edition:

4-ALDF-4C-40: Special Needs Inmates.

Standards for Adult Correctional Institutions, 4th edition:

4-4399: Special Needs Inmates.

Performance-Based Standards for Correctional Health Care in Adult Correctional Institutions.

8-3. National Commission on Correctional Health Care (NCCHC):

Standards for Health Services in Jails, 2014:

J-G-02: Patients with Special Health Needs.

- 9. PRIVACY AND RECORDKEEPING.** IHSC maintains detainee health records in accordance with the Privacy Act and as provided in the Alien Health Records System of Records Notice, 80 Federal Register 239 (January 5, 2015). The records in the electronic health record (eHR)/eCW are destroyed ten (10) years from the date the detainee leaves ICE custody. Retention periods for records of minors may differ. Paper records are scanned into the eHR and are destroyed after upload is complete.

Protection of Medical Records and Sensitive Personally Identifiable Information (PII).

- 9-1.** Staff must keep all medical records, whether electronic or paper, secure with access limited only to those with a need to know. Staff should lock paper records in a secure cabinet or room when not in use or not otherwise under the control of a person with a need to know.
- 9-2.** Staff should receive training at orientation and annually on the protection of a patient's medical information and Sensitive PII.
- 9-3.** Only authorized individuals with a need to know are permitted to access medical records and Sensitive PII.
- 9-4.** Staff should reference the Department of Homeland Security *Handbook for Safeguarding Sensitive PII* (Handbook) at:
(b)(7)(E)
when additional information concerning safeguarding sensitive PII is needed.

- 10. NO PRIVATE RIGHT STATEMENT.** This directive is an internal policy statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.